

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 10, 2016 at 10:00 a.m.

1. [10-42021](#)-B-13 RONALD/KYM BEACH MOTION TO MODIFY PLAN
 CK-2 Trevor E. Carson 1-2-16 [[80](#)]

Tentative Ruling: The Motion to Modify Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order state the following: As of February 25, 2016 (month 66), the Debtors have paid a total of \$205,380.09 into the plan, at which time the plan is completed. Additionally, the lump sum payment in the amount of \$11,900.00 shall be paid by no later than February 25, 2016, at which time the plan will be completed.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

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2. [12-36021](#)-B-13 ERNEST VALENTINE AND MOTION TO MODIFY PLAN
PGM-1 DIANE JOHNSON-VALENTINE 12-31-15 [[39](#)]
 Peter G. Macaluso

Tentative Ruling: The Motion Modify Chapter 13 Plan After Confirmation Filed on December 31, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the plan does not appear to be signed by the Debtors.

Second, the plan will take approximately 67 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Third, the Debtors do not offer an explanation for providing two mortgage/rental expenses and it appears that the expense on Schedule J might be a duplicate of the expense already listed in Class 1 of the plan.

Fourth, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$2,850.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

3. [11-23738](#)-B-13 TERRENCE/LISA BREELER MOTION TO SELL
PGM-2 Peter G. Macaluso 1-13-16 [[52](#)]

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The court's decision is to grant the motion to sell.

The Bankruptcy Code permits the Chapter 13 Debtors to short sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 3475 Pinecone Lane, Meadow Vista, California.

The proposed purchasers of the property Chris Erickson and Angie Erickson have agreed to purchase the Property for either \$450,000.00 (as stated in the motion and Exh. B) or \$455,000.00 (as stated in the Debtor's Declaration and Exh. A, C, D). The Debtors anticipate receiving \$10,000.00 for relocation expenses. The Debtors assert that the sale of the real property will not affect their ability to complete the plan; Debtors are in month 58 of their 60-month plan.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

The court shall enter an appropriate civil minute order consistent with this ruling.

4. [15-25941](#)-B-13 DEDRA RUSSELL
Peter G. Macaluso

CONTINUED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
12-2-15 [[39](#)]

Tentative Ruling: This matter was continued from January 27, 2016, to allow the Debtor to file by February 3, 2016, a motion to vacate dismissal. At the January 27, 2016, hearing, the court stayed its order dismissing this case for failure to make the \$10.00 installment when due.

The court's decision is to grant the motion to vacate dismissal.

Debtor argues that excusable neglect justifies the court vacating the order dismissing the case. The Debtor states that she was unable to adhere to her financial obligations due to medical co-pays for medications and physical therapy related to her problems with her spine. The Debtor states that while she is aware of her responsibility to make timely payments, she did not anticipate experiencing such severe health issues. According to the Debtor, dismissal of her case will result in wage garnishments, the loss of her home, and hardship on her family, which includes four children who she raises alone and who rely on her single income. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is supported by both cause and excusable neglect. Cause exists since the Debtor has paid the entirety of the filing fee installments but for being untimely with payment of the final \$10.00 installment. Moreover, vacating dismissal will allow the Debtor to avoid wage garnishments and the loss of her home. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtor's request is supported by a showing of excusable neglect since the Debtor did not anticipate her medical complications. Vacating dismissal will not result in prejudice to any party.

Given the unique circumstances of the Debtor, the court will grant the motion to vacate the order dismissing the case.

The court shall enter an appropriate civil minute order consistent with this ruling.

Final Ruling: No appearance at the February 10, 2016, hearing is required.

The Debtor's Motion to Value Collateral of Rebecca C. Fitzmorris has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Rebecca C. Fitzmorris at \$0.00.

The motion to value filed by Debtor to value the secured claim of Rebecca C. Fitzmorris ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 78453 Honeydew Lane, Covington, California ("Property"). Debtor seeks to value the Property at a fair market value of \$187,279.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately \$193,728.00. Creditor's second deed of trust secures a claim with a balance of approximately \$51,776.94 (dkt. 1). Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the amended plan.

First, the Debtors have not provided an explanation for the \$229.00 increase in expenses that has reduced their monthly net disposable income.

Second, the Declaration of the Debtors in support of this motion does not appear to have been signed by the Debtors since an additional third page is missing from the filed Declaration.

Third, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$538.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

7. [15-28948](#)-B-13 RICHARD/GERINE CAYLOR
JHW-1 Jeffrey S. Ogilvie
Thru #8

OBJECTION TO CONFIRMATION OF
PLAN BY FORD MOTOR CREDIT
COMPANY, LLC
1-15-16 [[24](#)]

Tentative Ruling: The Objection to Confirmation of Proposed Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain in part and overrule in part the objection and deny confirmation of the plan.

The Debtor's plan incorrectly states that Ford Motor Credit Company, LLC ("Creditor") does not hold a purchase money security interest in personal property in Class 2 of the plan. On this issue, the Creditor's objection is sustained.

However, the court will overrule Creditor's objection related to increasing the interest rate to 5.5%. The Creditor has produced no evidence in support of its objection that Debtors' proposed 3.9% interest rate is inconsistent with *Till*.

The Supreme Court decided in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default.

The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. *Cf. Farm Credit Bank v. Fowler (In re Fowler)*, 903 F.2d 694, 697 (9th Cir. 1990); *In re Camino Real Landscape Main. Contrs., Inc.*, 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. The debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

"Moreover, starting from a concededly low estimate and adjusting upward places the evidentiary burden squarely on the creditors, who are likely to have readier access to any information absent from the debtor's filing. . . ." *Till* at 479.

Here, Creditor has provided no admissible evidence, in the form of declaration or affidavit in support of its objection, of its assertion that the loan should be repaid at higher than Debtors' proposed 3.9% interest rate. Creditor argues that the national prime interest rate of 3.50% is insufficient to account for the risk of default by the Debtors; however, that is not the interest rate proposed by the Debtors. In fact, the Debtors have already provided a 0.40% increase above the national prime interest rate to account for any greater risk of default. Since the Creditor has produced no evidence that the Debtors' proposed 3.9% interest rate is inconsistent with *Till*, the Creditor's objection is overruled.

Because the plan incorrectly states that the Creditor does not have a purchase money security interest in personal property in Class 2, the plan filed November 18, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

8. [15-28948](#)-B-13 RICHARD/GERINE CAYLOR
JPJ-1 Jeffrey S. Ogilvie

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-19-16 [[30](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the plan proposes an impermissible modification of the secured claim of PNC Mortgage, the holder of the first deed of trust on the Debtors' principal residence. No evidence that the lender has consented to or is considering a loan modification has been presented. See 11 U.S.C. §§ 1322(b)(2).

Second, the claim of PNC Mortgage is mis-classified as a Class 1 claim because it will not receive ongoing monthly contractual payments. The Additional Provisions specifically state that the creditor will receive "adequate protection" payments of \$2,500.00 per month pending approval of a loan modification instead of ongoing monthly contractual payments. For the reasons stated in the preceding paragraph, this court does not allow additional provisions to provide for "adequate protection" payments to a creditor whose claim is secured by a deed of trust recorded against a debtor's personal residence absent the creditor's express written consent. Failure to object to a plan that includes additional provisions with those terms is not express written consent.

Third, the Debtors have not amended Schedule I to reflect a decrease in income of \$10.00 per hour nor amended Schedule J to reflect an additional housing expense of approximately \$1,000.00 per month for a residence in Yreka, California.

The plan filed November 18, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in
the Civil Minutes for the hearing.

The Trustee's Objection to Confirmation of the
Chapter 13 Plan and Conditional Motion to Dismiss Case
having been presented to the court, and upon review of
the pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Objection is sustained and
the proposed Chapter 13 plan filed November 18, 2015,
is not confirmed. The Debtors will be given 75 days
to confirm a plan and, if no plan is confirmed within
that time, the case will be dismissed on the Trustee's
ex parte application.

9. [11-46849](#)-B-13 MARTHA REDDIC
PGM-3 Peter G. Macaluso

MOTION TO MODIFY PLAN
12-31-15 [[50](#)]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on December 31, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming state the following: As of December 25, 2015, the Debtor has paid a total of \$10,550.00 into the plan and commencing January 25, 2016, the plan payment shall be \$125.00 for 10 months.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

10. [13-26751](#)-B-13 CHRISTOPHER/TERESA EVANS MOTION TO MODIFY PLAN
MJD-1 Matthew J. DeCaminada 12-30-15 [[39](#)]

Final Ruling: No appearance at the February 10, 2016, hearing is required.

The Debtors' Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on December 30, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The court's decision is to grant the motion to sell, subject to satisfactory explanation of the issues noted below.

The Bankruptcy Code permits the Chapter 13 Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor and co-owner/co-seller Joseph Vila propose to sell unimproved lots located in Costillo County, Colorado. The Debtor is 50% owner of the subject property. The subject property consists of the following tracts:

- Tract Land N2SE4SW4 2-2-71 CONT 45.514AC
- Tract of Land located in NW4 of Section 2 & NE4 of Section 3 TWN 2 RNG 71 CONT. 18.42 Acres M/L
- Tract of Land E2N2SW4 of SEC 2-2-71 CONT. 70.02 Acres
- Tract of Land NW4SW4 2-2-71 CONT. 44.13 AC
- Tract of Land NW4SW4 of SEC 2-2-71 CONT. 39.65 Acres
- Tract of Land S2SE4SE4 of SEC 2-2-71 CONT. 45.520 Acres
- Tract of Land S2SE4SE4 & N2SE4SE4 2-2-71 CONT. 90.69 Acres
- Tract of Land N2SW4E4 2-2-71 CONT. 45.00 AC
- Tract of Land S2SW4SE4 of SEC 2-2-71 CONT. 45.00 AC

The proposed purchasers of the property Gery Koevend and Theresa Ann Smith have agreed to purchase the Property for \$525,000.00, with a down payment of \$120,000.00 and the seller financing \$400,000.00. The Debtor shall explain if "seller financing" means the Debtor, the Debtor and the co-seller, or the co-seller, and how this seller financing affects the Debtor. There are no liens on the subject property as provided in the title report (exh. B, dkt. 65). Sufficient proceeds shall be turned over to the Chapter 13 Trustee to pay off the Chapter 13 plan at 100% to all creditors, estimated to be \$98,000.00. Net proceeds to seller is \$7,594.00. The Debtor shall explain if this is to be paid to the Debtor individually, the Debtor and co-seller, or the co-seller.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

The court shall enter an appropriate civil minute order consistent with this ruling.

12. [15-28865](#)-B-13 LINDA CHAND
Michael O'Dowd Hays

HEARING RE: CONFIRMATION OF
PLAN
11-20-15 [[11](#)]

Tentative Ruling: Due to clerical error, the deadline for filing a motion or complaint to challenge dischargeability of certain debts was not stated on the Notice of Chapter 13 Bankruptcy Case. The court has set the deadline for filing a motion or complaint to challenge dischargeability of certain debts to March 14, 2016, and the clerk's office has mailed out this order.

There being no objection to confirmation, the plan filed November 20, 2015, will be confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

13. [15-29565](#)-B-13 FRANK/CRYSTAL BARGIEL MOTION TO VALUE COLLATERAL OF
EJS-1 Eric John Schwab FUNANCING/GE
Thru #14 MONEYBANK/SYNCHRONY BANK
1-5-16 [[32](#)]

Final Ruling: No appearance at the February 10, 2016, hearing is required.

The Motion to Value Collateral of Funancing/GE Moneybank/Synchrony Bank has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Funancing/GE Moneybank/Synchrony Bank at \$2,680.00.

The motion filed by Debtors to value the secured claim of Funancing/GE Moneybank/Synchrony Bank ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a Kawasaki KVF360 A Quad ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$2,680.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in 2008 (exh. B, dkt. 35), which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$3,500.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$2,680.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

14. [15-29565](#)-B-13 FRANK/CRYSTAL BARGIEL MOTION TO AVOID LIEN OF
EJS-5 Eric John Schwab CITIBANK, N.A.
1-11-16 [[45](#)]

Final Ruling: No appearance at the February 10, 2016, hearing is required.

The Motion to Avoid Judicial Lien Pursuant to 11 USC 522(f) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter

the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against the Debtors' property commonly known as 7034 Salmon River Drive, Sacramento, California ("Property").

A judgment was entered against Joint-Debtor in favor of Creditor in the amount of \$1,295.65. An abstract of judgment was recorded with Sacramento County on September 19, 2011, which encumbers the Property. All other liens recorded against the Property total approximately \$222,433.00.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$201,572.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court shall enter an appropriate civil minute order consistent with this ruling.

MANFRED ANGSTENBERGER, ET
AL. VS.

Final Ruling: No appearance at the February 10, 2016, hearing is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion for relief from stay.

Manfred Angstenberger and Sheila Angstenberger ("Movants") seek relief from the automatic stay with respect to the real property commonly known as 7623 Windbridge Drive #36, Sacramento, California (the "Property"). Movant has provided the Declaration of Melissa Bonilla to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Bonilla Declaration states that there are 3 post-petition defaults, with a total of \$3,525.00 in post-petition payments past due. Additionally, there are 3 pre-petition payments in default, with a total of \$3,525.00 in pre-petition payments past due. The Declaration states that Movants are the legal owners of the property. Movants seek to proceed with the unlawful detainer action filed in state court on November 18, 2015.

Discussion

Movants present evidence that they are the owners of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movants commenced an unlawful detainer action in California Superior Court, County of Sacramento on November 18, 2015, with a Notice to Quit served on November 11, 2015. Exh. B and C, Dkt. 14.

Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movants have presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movants, their agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on January 4, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the plan will take 61 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the Debtor's current attorney is seeking an additional \$500.00 of fees to be paid through the plan under the "no look" fees. Since Debtor's prior attorney, Coggings and Johnston LLP, was paid \$3,500.00 under the "no look" fees, Debtor's current attorney must proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

17. [15-26973](#)-B-13 STEVEN RUTHENBECK
ET-2 Matthew R. Eason
Thru #18

MOTION TO CONFIRM PLAN
12-11-15 [[45](#)]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan Dated December 11, 2015, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the amended plan.

The plan payment in the amount of \$3,846.07 for months 1 through 14 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$8,291.00. The plan does not comply with Section 4.02 of the mandatory form plan.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

18. [15-26973](#)-B-13 STEVEN RUTHENBECK
ET-2 Matthew R. Eason

OBJECTION TO CONFIRMATION OF
PLAN BY CAM IX TRUST
12-17-15 [[54](#)]

Tentative Ruling: The Amended Objections to Confirmation of Second Amended Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$54,788.27 in pre-petition arrearages. The plan does not propose to cure all arrearages until Month 15 of the plan through a lump sum payment of \$164,300.00. The plan provides that the Debtor will liquidate one or more of his interests in real estate owned to fund the plan in Month 15. The court finds that the proposed liquidation, and any funds received from it, to be merely speculative. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages through ongoing payments, the plan cannot be confirmed.

The plan filed December 11, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

19. [15-28583](#)-B-13 DRUE BROWN
Thru #21 W. Steven Shumway

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY BOSCO
CREDIT, LLC
12-10-15 [[21](#)]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

Feasibility of the plan depends on the granting of the motion to value collateral of Bosco Credit, LLC. That motion is denied at Item #21.

The plan filed November 11, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

20. [15-28583](#)-B-13 DRUE BROWN
JPJ-1 W. Steven Shumway

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
12-23-15 [[26](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtor has filed a written reply to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

The Debtor's projected disposable income is not being applied to make payments to unsecured creditors. Additionally, feasibility of the plan depends on the granting of the motion to value collateral of Bosco Credit, LLC. That motion is denied at Item #21.

The plan filed November 11, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: The Motion to Value Property Located at 9 Shorecliff Court, Sacramento, California, has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition by the creditor and a response by the Debtor have been filed.

The court's decision is to deny the motion to value collateral of Bosco Credit, LLC at \$0.00.

This matter was continued from January 6, 2016, in order for Bosco Credit, LLC ("Creditor") to obtain and file with the court an appraisal by February 3, 2016, for the real property commonly known as 9 Shorecliff Court, Sacramento, California ("Property"). The creditor had objected to the Debtor's valuation of the Property at \$550,000.00. As the owner, Debtor's opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Creditor has filed appraisals by two (2) residential real estate appraisers and has also provided a roof repair estimate from a roofing sales person. The first appraisal is from real estate appraiser Chen Li, who states in his declaration that the fair market value of the property as of November 3, 2015, is \$605,000.00. The Li Declaration is supported by an appraisal analysis attached as Exhibit 1. Dkt. 45. The second appraisal is from real estate appraiser Michael H. Han, who states in his declaration that the fair market value of the property as of January 12, 2016, is \$615,000.00. The Han Declaration is supported by an appraiser analysis. Dkt. 51. The repair for the roof is estimated to cost between \$31,338.00 and \$44,625.00 according to the Declaration of Billy Strong. Dkt. 49.

Given that the Creditor's two appraisals are based on comparable sales and takes into account the extensive repairs the home needs, the court finds the appraisals more persuasive than the Debtor's original opinion of value. Furthermore, the appraisal of Chen Li, which values the Property at the time of the petition filing date of November 3, 2015, is most persuasive.

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately \$587,669.00. Creditor's second deed of trust secures a claim with a balance of approximately \$283,955.00. Therefore, Creditor's claim secured by a junior deed of trust is not wholly unsecured. See 11 U.S.C. § 1322(b)(2).

The court shall enter an appropriate civil minute order consistent with this ruling.

22. [15-28986](#)-B-13 STEVEN/ANADELIA MILLER
APN-1 Mark W. Briden

OBJECTION TO CONFIRMATION OF
PLAN BY CAPITAL ONE AUTO
FINANCE
12-30-15 [[27](#)]

Tentative Ruling: The Secured Creditor, Capital One Auto Finance, A Division of Capital One, N.A.'s Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). Debtors have filed a written reply to the objection.

The court's decision is to overrule the objection and confirm the plan.

Capital One Auto Finance ("Creditor") objects to confirmation on the grounds that the replacement value of its vehicle should be \$7,076.00, that the interest on the vehicle should be 6.25%, and that it receive pre- and post-confirmation adequate protection payments of no less than \$166.99 per month. However, the court has already valued the vehicle at \$4,757.00 at the motion to value collateral hearing held on January 13, 2015 (dkt. 34, 38). The court's valuation was based on the Creditor's filed Claim No. 3. The proof of claim states that the value of the vehicle is \$4,757.00 and the claim amount controls as an admission by the Creditor.

Debtors have filed a response agreeing to pay Creditor's principal sum of \$4,757.00 at 6.25% interest. The Debtors state that the present plan provides for monthly plan payments of \$209.00 for 48 months (which includes the \$70.00 monthly adequate protection payments to Creditor), and that they are willing to extend the life of the plan from 48 months to 59 months at the same monthly plan payment of \$209.00. Debtors state that these modifications will be included in the order confirming plan.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a) and the modifications shall be included in the order confirming plan. The objection is overruled and the plan filed November 19, 2015, is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

23. [15-29888](#)-B-13 SHANA WILLIAMS
BHT-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
1-8-16 [[13](#)]

DEBTOR DISMISSED:
01/11/2016

CALIFORNIA HOUSING FINANCE
AGENCY VS.

Final Ruling: No appearance at the February 10, 2016, hearing is required.

The case having previously been dismissed, the motion for relief from automatic stay is dismissed as moot.

The court shall enter an appropriate civil minute order consistent with this ruling.

24. [15-27614](#)-B-13 STEPHEN/SANDRA DEGUIRE MOTION FOR STAY PENDING APPEAL
MF-2 Reno F.R. Fernandez O.S.T.
Thru #25 1-29-16 [[86](#)]

DEBTOR DISMISSED: 01/19/2016

Final Ruling: Order entered 2/09/16. No appearance at the February 10, 2016, hearing is required.

25. [15-27615](#)-B-13 COREY DEGUIRE MOTION FOR STAY PENDING APPEAL
MF-2 Reno F.R. Fernandez O.S.T.
1-29-16 [[86](#)]

DEBTOR DISMISSED: 01/19/2016

Final Ruling: Order entered 2/09/16. No appearance at the February 10, 2016, hearing is required.